**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re:	)	Chapter 11
	)	
Carolina Sleep Shoppe, LLC	)	
	)	Case No. 13-32346
Debtor.	)	
	)	

INLAND AMERICAN MONROE POPLIN, L.L.C.'S LIMITED OBJECTION TO DEBTOR'S MOTION TO REJECT EXECUTORY CONTRACTS AND NON-RESIDENTIAL LEASES

Inland American Monroe Poplin, L.L.C. (the "Landlord"), by and through undersigned counsel, Moore & Van Allen PLLC, files this limited objection to the captioned debtor's Motion to Reject Executory Contracts and Non-Residential Leases (Doc. 45) (the "Motion").

JURISDICTION

1. The United States Bankruptcy Court for the Western District of North Carolina (the "Court") has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

BACKGROUND

2. On November 4, 2013 (the "Petition Date") the above-captioned debtor (the "Debtor") filed a voluntary petition under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the Court.

3. On or about December 19, 2011, Inland American Retail Management LLC, as managing agent for Landlord, and the Debtor entered into a lease (the "Lease") of nonresidential real property (the "Premises") located at Poplin Place (the "Center") in Monroe, North Carolina. The face pages and signature pages of the Lease are attached hereto as Exhibit "A".

4. Landlord is the current landlord under the Lease and owner of the Center.

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5. The Debtor owes Landlord past due pre-petition rent of $844.77.

6. The Debtor has also failed to pay the Landlord post-petition rent of $16,740.71 from and after the Petition Date through January 2014. A copy of an itemization of pre- and post-petition amounts due is attached hereto as Exhibit "B".

7. Upon information and belief, on December 13, 2013, the Debtor ceased operations at the Premises.

8. On December 17, 2013, the Debtor, through counsel, sent the Landlord's counsel a letter indicating that it had vacated the Premises, that it intends to reject the Lease, and that the Landlord may wish to secure the Premises. A copy of the December 17, 2013 letter is attached hereto as Exhibit "C".

9. On December 17, 2013, the Landlord, through counsel, wrote the Debtor, through its counsel, and asked when the rejection motion would be filed and made returnable. The Landlord never received a response to this communication.

10. The Motion was filed on January 10, 2013 and seeks to reject the Lease. The Debtor does not propose to retroactively reject the Lease although it does set forth the "Notice Date" as to the leases subject to the Motion as dates which are prior to the January 29, 2014 hearing date of the Motion.

SUMMARY OF LIMITED OBJECTION

11. The Landlord has no objection to rejection of the Lease. The Landlord does object, however, to the extent that the Debtor intends to obtain an Order approving an effective date for the rejection of the Lease that is retroactive to a date prior to the entry of such Order. Additionally, the Order should provide that any personal property of the Debtor at the Premises

is deemed abandoned as of rejection of the Lease and that the Landlord may dispose of such property in its sole and absolute discretion without any liability to the Debtor or any third party.

ANALYSIS

I. The Court Should Approve the Debtor's Rejection of the Lease Effective as of Entry of its Order and Not as of an Earlier Date

12. Rejection of the Lease requires this Court's approval and only becomes effective upon such approval. *See* 11 U.S.C. § 365(a) ("... the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor."); *see also In re Williams*, 1998 Bankr. LEXIS 1594. *11 (Bankr. E.D.N.C. Nov. 12, 1998) ("Like assumption, the majority of courts hold that rejection of any executory contract or unexpired lease prior to confirmation must be made by formal motion or set forth in a confirmed plan."); *Dynamic Changes Hypnosis Ctr., Inc. v. PCH Holding, LLC*, 306 B.R. 800, 809 (E.D. Va. 2004) (citing *In re Revco D.S., Inc.*, 109 B.R. 264, 267-70 (Bankr. N.D. Ohio 1989) ("rejection becomes effective only upon court approval); *In re 1 Potato 2, Inc.*, 182 B.R. 540, 542 (Bankr. D. Minn. 1995) ("a rejection of an unexpired lease becomes effective only upon court ordered express approval of said rejection"). The Debtor's statement three (3) weeks prior to its filing the Motion that it intends to reject the Lease is insufficient to reject the Lease and restore possession of the Premises to the Landlord. *See In re The Upper Crust, LLC*, 501 B.R. 1, 13 (Bankr. D. Mass. 2013) ("Approving retroactive rejection of the CDP Lease based on out-of court-communications between the Trustee and CDP would not only be contrary to the First Circuit's clear holding in Thinking Machines that rejection under § 365 'requires express approval by the court,' but 'would trivialize judicial oversight of the rejection process.'") (quoting *Thinking Machines Corp. v. Mellon Fin. Servs. Corp. (In re Thinking Machines)*, 67 F.3d 1021, 1026 (1st Cir. 1995); *see also In re Geonex Corp.*, 258 B.R. 336, 339 (Bankr. Md. 2001) ("The trustee is

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required to pay rent to a lessor under an unexpired, prepetition lease of nonresidential real property from the date of the filing of the petition until the lease is rejected and the failure to do so gives rise to an administrative claim . . . This requirement exists regardless of whether the debtor actually occupied the leased premises during the postpetition, prerejection period.")

13. The effective date of rejection of the Lease should be the date of this Court's order approving rejection. *See Paul Harris Stores, Inc. v. Mabel L. Salter Realty Trust (In re Paul Harris Stores, Inc.)*, 148 B.R. 307, 312-313 (S.D. Ind. 1992) ("In sum, the statute's plain language, the better-reasoned case law, and considerations of fairness all support the conclusion that the rejection of a lease under *§ 365* is effective only after approval by the bankruptcy court pursuant to *§ 365(a)*, or lapse of the statutory sixty-day period under *§ 365(d)(4)*, instead of when an act of rejection is first taken.") The Landlord is unable to exercise full dominion and control over the Premises and re-let the Premises until this Court approves the Debtor's rejection of the Lease. Furthermore, the precedent of this Court supports a finding that rejection takes place upon entry of an order regarding the same and that a landlord is entitled to the lease rate for rent that accrued from the petition date through the date of rejection. *See In re CSVA, Inc.*, 140 B.R., 116, 121 (Bankr. W.D.N.C.) (concluding "that under section 365(d)(3), each of the Landlords is entitled to a post-petition administrative rent claim for the full amount of the payments required under its lease through the date that the Court authorized the Trustee's rejection of each lease.")

II. The Court Should Direct Abandonment of any and all Personal Property Left at the Premises Upon Rejection

a. Abandonment of Personal Property at Premises

14. 11 U.S.C. § 554(b) provides:

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> On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

See 11 U.S.C. § 554(b).

15. The Debtor has sought to reject the Lease. It is apparent that any personal property that may remain at the Premises at the time of rejection is of no or inconsequential value or benefit to the estate and is effectively abandoned. The Landlord therefore requests that the Court enter an order deeming any personal property that remains at the Premises abandoned and provide that the Landlord may dispose of any such personal property in its sole and absolute discretion without liability to the Debtor or any third party. The Landlord should have full dominion and control over the Premises upon the effective date of rejection. In order to have such control, the Landlord must be able to dispose of any personal property at the Premises free of any automatic stay which would terminate upon abandonment of the property. *See* 11 U.S.C. § 362(c)(1).

CONCLUSION

WHEREFORE, the Landlord respectfully requests that the Court approve the Debtor's rejection of the Lease and provide that: (a) rejection of the Lease is effective as of the date that an Order approving the rejection is entered; and (b) any and all personal property located at the Premises is abandoned and the Landlord may dispose of such property in its sole and absolute discretion without liability to the Debtor or any third party.

[*Remainder of page intentionally left blank; signature page follows.*]

Dated: January 22, 2014
Charlotte, North Carolina

MOORE & VAN ALLEN PLLC

/s/ Luis M. Lluberas
Luis M. Lluberas (NC Bar No. 38320)
Moore & Van Allen PLLC
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Monroe Poplin, L.L.C.

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Email: knewman@menterlaw.com

[1] Menter, Rudin & Trivelpiece, P.C. has not filed for admission *pro hac vice*. Therefore, its information is included for informational purposes only.

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re:	)	Chapter 11
	)	
Carolina Sleep Shoppe, LLC	)	
	)	Case No. 13-32346
Debtor.	)	
	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of ***INLAND AMERICAN MONROE POPLIN, L.L.C.'S LIMITED OBJECTION TO DEBTOR'S MOTION TO REJECT EXECUTORY CONTRACTS AND NON-RESIDENTIAL LEASES*** has been served this date by electronic notification on those parties registered with the United State Bankruptcy Court, Western District of North Carolina ECF system to receive notices for this case and on the following parties listed below by first-class mail, postage prepaid:

Carolina Sleep Shoppe, LLC
1897 Scott Futrell Drive
Charlotte, NC 28208

Moon Wright & Houston, PLLC
Attn: Richard S. Wright / Travis W. Moon
227 W. Trade St., Suite 180
Charlotte, NC 28202

U.S. Bankruptcy Administrator
402 W. Trade St., Suite 200
Charlotte, NC 28202-1669

This the 22nd day of January, 2014.

/s/ Luis M. Lluberas
Luis M. Lluberas

EXHIBIT "A"

SHOPPING CENTER

LEASE AGREEMENT

FOR

CAROLINA SLEEP SHOPPE, LLC,
A NORTH CAROLINA LIMITED LIABILITY COMPANY,
D/B/A AMERICA'S MATTRESS
TENANT

POPLIN PLACE
SHOPPING CENTER

Lease Draft Date: December 9, 2011

88767.1

SHOPPING CENTER LEASE AGREEMENT

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EXHIBIT G - Rules and Regulations
EXHIBIT H - Sample Certificate of Insurance
RIDER

SHOPPING CENTER LEASE AGREEMENT

ARTICLE I - ABSTRACT OF LEASE

Date of Lease: This Shopping Center Lease Agreement (the "Lease") is entered into by the undersigned parties on this 19 of December, 2011.

1.1 PARTIES.

A. LANDLORD:

Name:	Inland American Retail Management LLC, as managing agent for the owner of the Shopping Center	Phone:	(630) 218-8000
		Rent Payment: (Location)	13977 Collections Ctr Dr. Chicago, Illinois 60693
Address: (for notices)	2901 Butterfield Road Oak Brook, Illinois 60523		

B. OWNER:

Name:	Inland American Monroe Poplin, L.L.C.	Phone:	(630) 218-8000
Address: (for notices)	2901 Butterfield Road Oak Brook, Illinois 60523		

C. TENANT:

Name: (and Status)	Carolina Sleep Shoppe, LLC, a North Carolina limited liability Company	Phone:	(704) 540 - 4626
		Store Name: (Trade Name)	America's Mattress
Address: (for notices)	1897 Scott Futrell Drive Charlotte, North Carolina 28208 Attn: Anthony Poole		

D. INTENTIONALLY OMITTED

1.2 PROPERTY.

A. SHOPPING CENTER:

Name:	Poplin Place	Description: Site Plan showing the layout of Shopping Center (and approximate location of Premises) is attached as Exhibit A.
Location: (include county)	2901 W. Highway 74 Monroe, North Carolina 28110	

B. PREMISES:

Space No.:	2807 W. Highway 74 Unit 914-OP1B (Space 24) Monroe, North Carolina 28110	Description: Approximately **2,800** square feet of gross floor as outlined on the Site Plan attached as Exhibit A.

1.3 TERM OF LEASE.

A. The term (the "Term") of this Lease shall be for a period commencing on the date of Landlord's delivery of possession of the Premises to Tenant with Landlord's Work "substantially completed" (as defined and described in Section 6.2 below) (the "Commencement Date"), and ending and expiring on the last day of the month which is five (5) years after the Rent Commencement Date if the Rent Commencement Date is the first day of a month or, if the Rent Commencement Date is other than the first day of a month, on the first full month following the Rent Commencement Date (the "Termination Date"), unless sooner terminated or extended as provided in this Lease. The Rent Commencement Date shall be two (2) months after the Commencement Date.

B. Extended Term: one (1) option of five (5) years, as provided in Section 3.1below.

12.11 COUNTERPARTS. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.12 EXHIBITS AND SCHEDULES. All exhibits and schedules attached to this Lease are hereby incorporated by reference.

TENANT:

Carolina Sleep Shoppe, LLC, a North Carolina limited liability company, d/b/a America's Mattress

By: [signature]

Name: Anthony Poole

Its: __________

Dated: 12-12-11

LANDLORD:

Inland American Retail Management LLC, as managing agent for the owner of the Shopping Center

By: [signature]

Name: David Solganik

Its: Senior Vice President

Dated: 12/19/11

EXHIBIT "B"

IAMER
moore
1/3/2014

Payment History Report By G/L Date
1/1/1980 - 1/3/2014
Detail Charges / Summary Rcpts

Bldg Nbr: 44648 Bldg Name: POPLIN PLACE
Unit: 024 Tenant Name: America's Mattress
Tenant: 369706 Lease Term: 3/1/2012 - 4/30/2017 Lease Status: Active
Lease: 25498 S/D Req'd: 6,160.00 S/D Held: -6,160.00

GL Date	Billing Period	Invoice	Check	Remark	Rent	Cam	Tax	Other	Total Charges	Total Receipts	Cumulative Balance
				Chrgs/Reg Rcpts up to							0.00
3/12/2012	3/2012	1809770		Monthly Charges							0.00
4/1/2012	4/2012	1829436		Monthly Charges							0.00
5/1/2012	5/2012	1847954		Monthly Charges	4,900.00	471.33	788.67		6,160.00		6,160.00
5/4/2012	5/2012		1533	Receipt						-6,160.00	0.00
6/1/2012	6/2012		1692	Receipt						-6,160.00	-6,160.00
6/1/2012	6/2012	1866307		Monthly Charges	4,900.00	471.33	788.67		6,160.00		0.00
7/1/2012	7/2012	1892612		Monthly Charges	4,900.00	471.33	788.67		6,160.00		6,160.00
7/9/2012	7/2012		1804	Receipt						-6,160.00	0.00
8/1/2012	8/2012		1917	Receipt						-6,160.00	-6,160.00
8/1/2012	8/2012	1924476		Monthly Charges	4,900.00	471.33	788.67		6,160.00		0.00
9/1/2012	9/2012	1957112		Monthly Charges	4,900.00	471.33	788.67		6,160.00		6,160.00
9/7/2012	9/2012		2052	Receipt						-6,160.00	0.00
10/1/2012	10/2012	1982018		Monthly Charges	4,900.00	471.33	788.67		6,160.00		6,160.00
10/3/2012	10/2012		2173	Receipt						-6,160.00	0.00
11/1/2012	11/2012	2016997		Monthly Charges	4,900.00	471.33	788.67		6,160.00		6,160.00
11/6/2012	11/2012		2299	Receipt						-6,160.00	0.00
11/30/2012	11/2012		2375	Receipt						-6,160.00	-6,160.00
12/1/2012	12/2012	2045895		Monthly Charges	4,900.00	471.33	788.67		6,160.00		0.00
12/6/2012	12/2012	2054688		RET True-Up 1/12 - 12/12			942.77		942.77		942.77
12/24/2012	12/2012		3260	Receipt						-942.77	0.00
1/1/2013	1/2013	2070680		Monthly Charges	4,900.00	471.33	902.82		6,274.15		6,274.15
1/15/2013	1/2013		2527	Receipt						-7,216.92	-942.77
2/1/2013	2/2013	2086882		Monthly Charges	4,900.00	471.33	902.82		6,274.15		5,331.38
2/4/2013	2/2013		2600	Receipt						-6,160.00	-828.62
2/25/2013	2/2013		2690	Receipt						-5,331.38	-6,160.00
3/1/2013	3/2013	2103036		Monthly Charges	4,900.00	471.33	902.82		6,274.15		114.15
3/27/2013	3/2013	2126842		02/13 waste removal				283.50	283.50		397.65
3/27/2013	3/2013	2127245		01/13 waste removal				283.50	283.50		681.15
3/27/2013	3/2013	2127264		03/13 waste removal				288.75	288.75		969.90
4/1/2013	4/2013	2122669		Monthly Charges	4,900.00	471.33	902.82		6,274.15		7,244.05
4/29/2013	4/2013		2847	Receipt						-6,388.30	855.75
5/1/2013	5/2013	2149392		Monthly Charges	5,133.33	471.33	902.82		6,507.48		7,363.23
5/31/2013	5/2013		2899	Receipt						-6,160.00	1,203.23
6/1/2013	6/2013	2167591		Monthly Charges	5,133.33	471.33	902.82		6,507.48		7,710.71
6/10/2013	6/2013		3632	Receipt						-6,160.00	1,550.71
6/25/2013	6/2013	2192836		5/13 Waste Removal				146.84	146.84		1,697.55

6/25/2013	6/2013	2192845		4/13 Waste Removal				262.50	262.50		1,960.05
7/1/2013	7/2013	2186704		Monthly Charges	5,133.33	471.33	902.82		6,507.48		8,467.53
7/11/2013	7/2013	2203062		06/13 waste removal				231.38	231.38		8,698.91
7/17/2013	7/2013	2204912		July 2013 Waste Removal				194.02	194.02		8,892.93
7/22/2013	7/2013		3027	Receipt						-6,800.72	2,092.21
7/29/2013	12/2012	2215245		CAM True-Up 1/12 - 12/12		4,169.07			4,169.07		6,261.28
8/1/2013	8/2013	2210520		Monthly Charges	5,133.33	471.33	902.82		6,507.48		12,768.76
8/16/2013	8/2013		3062	Receipt						-12,768.76	0.00
8/28/2013	8/2013	2230261		08/13 waste removal				194.02	194.02		194.02
9/1/2013	9/2013	2223985		Monthly Charges	5,133.33	471.33	902.82		6,507.48		6,701.50
9/9/2013	9/2013		3124	Receipt						-6,701.50	0.00
9/16/2013	9/2013	2236469		Waste Removal 9/13				194.02	194.02		194.02
10/1/2013	10/2013	2240414		Monthly Charges	5,133.33	471.33	902.82		6,507.48		6,701.50
10/14/2013	10/2013	2254636		10/13 waste removal				194.02	194.02		6,895.52
10/21/2013	10/2013		3218	Receipt						-6,701.50	194.02
11/1/2013	11/2013	2258490		Monthly Charges	5,133.33	471.33	902.82		6,507.48		6,701.50
11/14/2013	11/2013	2272514		11/13 waste removal				194.02	194.02		6,895.52
12/1/2013	12/2013	2278015		Monthly Charges	5,133.33	471.33	902.82		6,507.48		13,403.00
12/16/2013	12/2013	2287837		12/13 Waste removal				194.02	194.02		13,597.02
12/27/2013	12/2013		3305	Receipt						-2,519.02	11,078.00
1/1/2014	1/2014	2296827		Monthly Charges	5,133.33	471.33	902.82		6,507.48		17,585.48
				Totals	104,999.97	14,067.00	18,988.79	2,660.59	140,716.35	-123,130.87	
				Total Outstanding Due: $	**17,585.48**						

EXHIBIT "C"

MOON WRIGHT & HOUSTON

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December 17, 2013

Kevin M. Newman
Menter, Rudin & Trivelpiece, P.C.
308 Maltbie Street, Suite 200
Syracuse, NY 13204-1498

Via Certified and Electronic Mail

Re: ***Carolina Sleep Shoppe, LLC / WDNC Bankruptcy Case No. 13-32346***
Rejection of Lease – 2807 West Hwy 74, Unit 914-OP1B, Monroe, NC

Dear Mr. Newman:

As you are aware, this firm represents Carolina Sleep Shoppe, LLC (the "Debtor"), which filed for relief under Chapter 11 of the United States Bankruptcy Code in the Western District of North Carolina on November 4, 2013. Inland American Monroe Poplin, LLC ("Inland") is a party with the Debtor to that unexpired lease of certain real property located at 2807 West Highway 74, Unit 914-OP1B, Monroe, North Carolina (the "Premises"), dated December 19, 2011 (the "Lease"). It is our understanding that you represent Inland or Inland American Retail Management, LLC as its managing agent.

This letter is to notify you that, subject to approval of the United States Bankruptcy Court for the Western District of North Carolina, the Debtor intends to reject the Lease pursuant to 11 U.S.C. § 365. The Debtor vacated the Premises on December 13, 2013; therefore, Inland or its agent may wish to act promptly in order to secure the Premises to the extent it has not already done so. You may contact this office or Matthew W. Smith of The Finley Group (704-375-7542) should you require additional information. Otherwise, we thank you in advance for your prompt attention to this matter.

Sincerely,

Richard S. Wright

Cc: Inland American Monroe Poplin, LLC, c/o Inland American Retail Management, LLC, Managing Agent, 2901 Butterfield Road, Oak Brook, Illinois 60523